

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**ALLAN A. PETERSON,**

**Plaintiff,**

**v.**

**Civil Action No. 2:06cv118**

**ANDURAY E. WHITE, et. al.,**

**Defendants.**

**ORDER**

It will be recalled that on January 31, 2007, Magistrate Judge Kaull filed his Report and Recommendation, wherein the Plaintiff was directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. No objections have been filed.

The Magistrate Judge recommends that the action be dismissed without prejudice to the Plaintiff proceeding with Civil Action No. 3:06cv114, an identically filed civil action. Plaintiff has requested that the above-styled civil action be dismissed, and he has further requested that the complaint and exhibits in the instant matter be sent to Martinsburg for filing in his original case. The Court, upon an independent de novo consideration of all matters now before it, is of the opinion that the Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action. As noted in the Report and Recommendation, it appears as though all documents filed in the instant matter have already been docketed as filed in the Martinsburg action, and forwarding them is unnecessary. Therefore, it is

**ORDERED** that Magistrate Judge Kaul's Report and Recommendation be, and the same hereby is, accepted in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

**ORDERED** that the Plaintiff's above-styled Bivens Complaint be, and the same hereby is, **DISMISSED** without prejudice to the Plaintiff's right to proceed with Civil Action No. 3:06cv114. It is further

**ORDERED** that the above-styled action shall be **STRICKEN** from the docket of this Court. It is further

**ORDERED** that, if Plaintiff should desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, Plaintiff may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed in forma pauperis from the United States Court of Appeals for the Fourth Circuit.

ENTER: November 19<sup>th</sup>, 2007



United States District Judge